

MONTANA LEGISLATIVE HISTORY

Chapter 425 19 82

Bill H _____ S 226 Original bill & history ☒ C

H. Committee on Judiciary

Hearing Date(s) Mar 20 ☒ C

Mar 23 ☒ C

_____ ☐ C

_____ ☐ C

Date Out Mar 23 ☒ C

S. Committee on Judiciary

Hearing Date(s) Feb 18 ☒ C

Feb 19 ☒ C

_____ ☐ C

_____ ☐ C

Feb 19 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

SENATE FINAL STATUS

TRANSMITTED TO HOUSE
 2/18 REFERRED TO TAXATION
 3/04 REVISED FISCAL NOTE REQUESTED
 3/09 REVISED FISCAL NOTE RECEIVED
 3/27 HEARING
 4/07 COMMITTEE REPORT--BILL CONCURRED
 4/09 2ND READING CONCURRED 86 13
 4/10 3RD READING CONCURRED 87 9

RETURNED TO SENATE
 4/14 SIGNED BY PRESIDENT
 4/15 SIGNED BY SPEAKER

 4/15 TRANSMITTED TO GOVERNOR
 4/20 SIGNED BY GOVERNOR
 CHAPTER NUMBER 565 EFFECTIVE DATE: 10/01/87

SB 225 INTRODUCED BY HALLIGAN
 ADOPT THE UNIFORM PREMARITAL AGREEMENT ACT

1/27 INTRODUCED
 1/27 REFERRED TO JUDICIARY
 2/06 HEARING
 2/10 COMMITTEE REPORT--BILL PASSED AS AMENDED
 2/13 2ND READING PASSED 50 0
 2/16 3RD READING PASSED 50 0

TRANSMITTED TO HOUSE
 2/18 REFERRED TO JUDICIARY
 3/06 HEARING
 3/10 COMMITTEE REPORT--BILL CONCURRED
 3/13 2ND READING CONCURRED 93 2
 3/14 3RD READING CONCURRED 91 6

RETURNED TO SENATE
 3/19 SIGNED BY PRESIDENT
 3/20 SIGNED BY SPEAKER

 3/20 TRANSMITTED TO GOVERNOR
 3/24 SIGNED BY GOVERNOR
 CHAPTER NUMBER 189 EFFECTIVE DATE: 10/01/87

SB 226 INTRODUCED BY HALLIGAN
 REVISING PROCEDURES FOR YOUTH DETENTION
 BY REQUEST OF JUVENILE JUSTICE COMMISSION

1/27 INTRODUCED
 1/27 REFERRED TO JUDICIARY
 1/27 FISCAL NOTE REQUESTED
 2/03 FISCAL NOTE RECEIVED
 2/17 HEARING
 2/19 COMMITTEE REPORT--BILL PASSED AS AMENDED
 2/21 STATEMENT OF INTENT ADOPTED
 2/21 2ND READING PASSED 49 0
 2/23 3RD READING PASSED 49 0

TRANSMITTED TO HOUSE
 2/24 REFERRED TO JUDICIARY
 3/20 HEARING
 3/23 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
 3/28 2ND READING CONCURRED 83 2
 3/30 3RD READING CONCURRED 98 0
 3/30 RECONSIDERED ACTION ON 3RD READING;

SENATE FINAL STATUS

	PLACED ON 2ND READING		
3/30	2ND READING CONCURRED AS AMENDED	95	0
3/30	3RD READING CONCURRED	96	0
	RETURNED TO SENATE WITH AMENDMENTS		
4/03	2ND READING AMENDMENTS CONCURRED	50	0
4/04	3RD READING AMENDMENTS CONCURRED	49	0
4/09	SIGNED BY PRESIDENT		
4/10	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 475		
	CHAPTER NUMBER 475 EFFECTIVE DATE: 10/01/87		

SB 227 INTRODUCED BY HAFHEY
 CLARIFY ENCUMBRANCE ON APPROPRIATION BY INTERAGENCY
 AGREEMENT
 BY REQUEST OF DEPARTMENT OF ADMINISTRATION

1/27	INTRODUCED		
1/27	REFERRED TO FINANCE & CLAIMS		
2/13	HEARING		
2/16	COMMITTEE REPORT--BILL PASSED		
2/18	2ND READING PASSED	50	0
2/20	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO APPROPRIATIONS		
3/02	COMMITTEE REPORT--BILL CONCURRED		
3/03	2ND READING CONCURRED	91	4
3/04	3RD READING CONCURRED	90	6
	RETURNED TO SENATE		
3/07	SIGNED BY PRESIDENT		
3/09	SIGNED BY SPEAKER		
3/09	TRANSMITTED TO GOVERNOR		
3/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 60 EFFECTIVE DATE: 3/13/87		

SB 228 INTRODUCED BY VAN VALKENBURG
 REVISE ALLOCATION OF COAL SEVERANCE TAX PROCEEDS
 BY REQUEST OF GOVERNOR

1/26	INTRODUCED		
1/26	REFERRED TO TAXATION		
1/27	FISCAL NOTE REQUESTED		
2/03	HEARING		
2/03	FISCAL NOTE RECEIVED		
3/10	COMMITTEE REPORT--BILL PASSED AS AMENDED		
3/11	2ND READING PASSED	38	11
3/13	3RD READING PASSED	38	12
	TRANSMITTED TO HOUSE		
3/13	REFERRED TO TAXATION		
3/30	HEARING		
4/09	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
4/22	2ND READING CONCURRED AS AMENDED	73	26
4/23	3RD READING CONCURRED	67	32
4/24	TAKEN FROM SPEAKER'S DESK AND PLACED ON 2ND READING		
4/24	2ND READING CONCURRED	67	27
4/24	3RD READING CONCURRED	67	32

SENATE BILL NO. 226

INTRODUCED BY HALLIGAN

BY REQUEST OF THE JUVENILE JUSTICE COMMISSION

IN THE SENATE

JANUARY 27, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 19, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1987	PRINTING REPORT.
FEBRUARY 21, 1987	SECOND READING, DO PASS.
	STATEMENT OF INTENT ADOPTED.
FEBRUARY 23, 1987	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 49; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 24, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 23, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 28, 1987	SECOND READING, CONCURRED IN.
MARCH 30, 1987	THIRD READING, CONCURRED IN.
	ON MOTION, RECONSIDER THIRD READING ACTION. BILL PLACED ON SECOND READING THIS DAY.
	SECOND READING, CONCURRED IN AS AMENDED.

MARCH 30, 1987

ON MOTION, BILL PLACED ON THIRD
READING THIS DAY.

THIRD READING, CONCURRED IN.
AYES, 96; NOES, 0.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1987

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 4, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 *Senate* BILL NO. *226*
2 INTRODUCED BY *Hallypin*
3 BY REQUEST OF THE JUVENILE JUSTICE COMMISSION
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROCEDURES FOR
6 YOUTH DETENTION; REQUIRING A PROBABLE CAUSE HEARING AFTER A
7 YOUTH HAS BEEN TAKEN INTO CUSTODY; PROVIDING DETENTION
8 PROCEDURES FOR A YOUTH BEFORE A PROBABLE CAUSE HEARING;
9 ALLOWING RELEASE OF A YOUTH ON BAIL; ALLOWING ESTABLISHMENT
10 OF REGIONAL DETENTION FACILITIES; GRANTING THE DEPARTMENT OF
11 INSTITUTIONS RULEMAKING AUTHORITY; AND AMENDING SECTIONS
12 7-32-2221, 41-5-103, 41-5-303, 41-5-305, 41-5-306, 41-5-502,
13 41-5-802, AND 53-30-229, MCA."
14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
16 NEW SECTION. Section 1. Hearing for probable cause --
17 detention. (1) A youth who has been taken into custody may
18 not be held longer than 24 hours, excluding weekends and
19 legal holidays, unless a hearing has been held by the court
20 to determine whether there is probable cause to believe he
21 is a delinquent youth or a youth in need of supervision.
22 (2) At the probable cause hearing, the court shall
23 inform the youth of his constitutional rights and his rights
24 under this chapter.
25 (3) A parent, guardian, or legal custodian of the

1 youth may be held in contempt of court for failing to be
2 present at the probable cause hearing, unless he:
3 (a) cannot be located through diligent efforts of the
4 investigating peace officer or peace officers; or
5 (b) is excused by the court for good cause.
6 (4) At the probable cause hearing, the court may
7 appoint a guardian ad litem as provided in 41-5-512.
8 (5) If the court determines that there is probable
9 cause to believe the youth is delinquent or is a youth in
10 need of supervision and if the youth meets the criteria in
11 41-5-305, the youth may be placed in a shelter care facility
12 or detention facility as provided in 41-5-306, but may not
13 be placed in a jail or other facility for adults. If the
14 court does not find probable cause, the youth must be
15 immediately released.
16 NEW SECTION. Section 2. Placement of youth before
17 probable cause hearing. (1) Before the probable cause
18 hearing, a youth, except for a youth alleged to be a youth
19 in need of care, may be held in a jail or other facility for
20 adults only if:
21 (a) the facilities in 41-5-306 are not available or do
22 not provide adequate security;
23 (b) the placement is in an area physically and
24 visually separate from those of adults; and
25 (c) it appears that public safety and protection

1 reasonably require the youth to be held.

2 (2) The official in charge of a jail or other facility
3 for the detention of adult offenders or persons charged with
4 a crime shall inform the court immediately if a person who
5 is or appears to be under the age of 18 years is received at
6 the facility.

7 NEW SECTION. Section 3. Bail. A youth placed in a
8 detention or shelter care facility may be released on bail.
9 The court shall use the provisions of Title 46, chapter 9,
10 as guidance. In determining the amount of bail, the court
11 shall consider the financial ability of the parents or legal
12 custodian of the youth.

13 NEW SECTION. Section 4. Regional detention facility.
14 (1) A regional detention facility may be established and
15 maintained through cooperation or by cooperative agreement
16 of more than one county or city.

17 (2) Each regional detention facility must be licensed
18 by the department of institutions.

19 (3) The county determined by the court as the
20 residence of the youth is responsible for the cost of the
21 detention of the youth, including medical expenses incurred
22 during detention.

23 (4) Counties receiving detention services must be
24 billed monthly for services provided during the preceding
25 month and may be refused services if bills are not paid

1 within 60 days of receipt of a statement.

2 NEW SECTION. Section 5. Rules. The department of
3 institutions shall make rules governing the licensing
4 procedures for regional and county detention facilities.

5 Section 6. Section 41-5-103, MCA, is amended to read:

6 "41-5-103. Definitions. For the purposes of the
7 Montana Youth Court Act, unless otherwise stated the
8 following definitions apply:

9 (1) "Adult" means an individual who is 18 years of age
10 or older.

11 (2) "Agency" means any entity of state or local
12 government authorized by law to be responsible for the care
13 or rehabilitation of youth.

14 (3) "Commit" means to transfer to legal custody.

15 (4) "Court", when used without further qualification,
16 means the youth court of the district court.

17 (5) "Foster home" means a private residence approved
18 by the court for placement of a youth.

19 (6) "Guardianship" means the status created and
20 defined by law between a youth and an adult with the
21 reciprocal rights, duties, and responsibilities.

22 (7) "Judge", when used without further qualification,
23 means the judge of the youth court.

24 (8) (a) "Legal custody" means the legal status created
25 by order of a court of competent jurisdiction that gives a

1 person the right and duty to:

- 2 (i) have physical custody of the youth;
- 3 (ii) determine with whom the youth shall live and for
- 4 what period;
- 5 (iii) protect, train, and discipline the youth; and
- 6 (iv) provide the youth with food, shelter, education,
- 7 and ordinary medical care.

8 (b) An individual granted legal custody of a youth
9 shall personally exercise his rights and duties as guardian
10 unless otherwise authorized by the court entering the order.

11 (9) "Parent" means the natural or adoptive parent but
12 does not include a person whose parental rights have been
13 judicially terminated, nor does it include the putative
14 father of an illegitimate youth unless his paternity is
15 established by an adjudication or by other clear and
16 convincing proof.

17 (10) "Youth" means an individual who is less than 18
18 years of age without regard to sex or emancipation.

19 (11) "Youth court" means the court established pursuant
20 to this chapter to hear all proceedings in which a youth is
21 alleged to be a delinquent youth, a youth in need of
22 supervision, or a youth in need of care and includes the
23 youth court, the judge, and probation officers.

24 (12) "Delinquent youth" means a youth:

- 25 (a) who has committed an offense which, if committed

1 by an adult, would constitute a criminal offense;

- 2 (b) who, having been placed on probation as a
- 3 delinquent youth or a youth in need of supervision, violates
- 4 any condition of his probation.

5 (13) "Youth in need of supervision" means a youth who
6 commits an offense prohibited by law which, if committed by
7 an adult, would not constitute a criminal offense, including
8 but not limited to a youth who:

- 9 (a) violates any Montana municipal or state law
- 10 regarding use of alcoholic beverages by minors;

11 (b) habitually disobeys the reasonable and lawful
12 demands of his parents or guardian or is ungovernable and
13 beyond their control;

14 (c) being subject to compulsory school attendance, is
15 habitually truant from school; or

16 (d) has committed any of the acts of a delinquent
17 youth but whom the youth court in its discretion chooses to
18 regard as a youth in need of supervision.

19 (14) "Youth in need of care" means a youth as defined
20 in 41-3-102.

21 (15) "Custodian" means a person other than a parent or
22 guardian to whom legal custody of the youth has been given
23 but does not include a person who has only physical custody.

24 (16) "Necessary parties" include the youth, his
25 parents, guardian, custodian, or spouse.

(17) "State youth correctional facility" means a residential facility for the rehabilitation of delinquent youth such as Pine Hills school in Miles City, and Mountain View school in Helena.

(18) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(19) "Detention" means the temporary substitute care of youth in physically restricting facilities.

(20) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will.

~~{20}~~ (21) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made under the jurisdiction of a youth court proceeding.

~~{21}~~ (22) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian. ~~Nothing-in-this-definition-is-intended-to-include juvenile--correctional--facilities,--evaluation--facilities, mental---health---facilities--and--services,--and--aftercare programs-operated-by-the-department-of-institutions.;~~

Section 7. Section 41-5-303, MCA, is amended to read:

"41-5-303. Rights of youth ~~upon--apprehension taken into custody.~~ When a youth is detained taken into custody for investigation or questioning upon a matter which could result in a petition alleging that the youth ~~being--detained~~ is either delinquent or in need of supervision, the following requirements must be met:

(1) The youth shall be immediately and effectively advised of his constitutional rights and his rights under this chapter.

(2) The youth may waive such rights under the following situations:

(a) when the youth is under the age of 12 years, the parents of the youth may make an effective waiver;

(b) when the youth is over the age of 12 years and the youth and his parents agree, they may make an effective waiver; and

(c) when the youth is over the age of 12 years and the youth and his parents do not agree, the youth may make an effective waiver only with advice of counsel.

(3) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found

1 through diligent efforts, a close relative or friend chosen
 2 by the youth must be notified."

3 Section 8. Section 41-5-305, MCA, is amended to read:

4 "41-5-305. Detention and shelter care of youth. (1) A
 5 After a probable cause hearing provided for in [section 1],
 6 a youth taken-into-custody may not be detained-in-a-jail-or
 7 other-facility-for-detention-purposes placed in a detention
 8 facility unless:

9 (a) he has allegedly committed an--act one of the
 10 following acts which if committed by an adult would
 11 constitute a criminal offense; ~~and:~~

12 ~~{a}--the-alleged-act-is-one-of-the-following:~~

13 (i) criminal homicide as defined in 45-5-101;

14 (ii) arson as defined in 45-6-103;

15 (iii) aggravated or felony assault as defined in
 16 45-5-202;

17 (iv) robbery as defined in 45-5-401;

18 (v) burglary or aggravated burglary as defined in
 19 45-6-204;

20 (vi) sexual intercourse without consent as defined in
 21 45-5-503;

22 (vii) aggravated kidnapping as defined in 45-5-303;

23 (viii) possession of explosives as defined in 45-8-335;

24 (ix) criminal sale of dangerous drugs for profit as
 25 included in 45-9-101; or

1 (x) attempt as defined in 45-4-103 of any of the acts
 2 enumerated in subsections (1)(a)(i) through (1)(a)(ix);

3 (b) he has escaped from a correctional facility;

4 (c) he has violated a valid court order or an
 5 aftercare agreement; or

6 (d) his detention is required to protect persons or
 7 property;

8 (e) there is good reason to believe the youth will not
 9 appear for court proceedings as ordered; or

10 ~~{d}{f}~~ he meets the criteria for detention established
 11 by the youth court in the judicial district with
 12 jurisdiction over the youth.

13 (2) A youth ~~taken--into-custody~~ may not be sheltered
 14 ~~prior-to-the-hearing-on-the-petition-except-when~~ placed in a
 15 shelter care facility unless:

16 (a) the youth and his family need shelter care to
 17 address their problematic situation when it is not possible
 18 for the youth to remain at home;

19 (b) the youth needs to be protected from physical or
 20 emotional harm;

21 (c) the youth needs to be deterred or prevented from
 22 immediate repetition of his troubling behavior;

23 (d) shelter care is necessary to assess the youth and
 24 his environment;

25 (e) shelter care is necessary to provide adequate time

for case planning and disposition; or

(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family."

Section 9. Section 41-5-306, MCA, is amended to read:

"41-5-306. Place of shelter care or detention. (1) A After a probable cause hearing provided for in [section 1], a youth alleged to be a ~~delinquent-youth-or~~ youth in need of supervision may be ~~sheltered~~ placed only in:

(a) a licensed youth foster home as defined in 41-3-1102;

(b) a facility operated by a licensed child welfare agency; or

(c) a licensed youth group home as defined in 41-3-1102.

~~{2}-A-youth-alleged-to-be-a-delinquent--youth--may--be detained--in--a--jail-or-other-facility-for-the-detention-of adults-only-if-~~

~~{a}--the-facilities-in-subsection-{1}-are-not-available or-do-not-provide-adequate-security;~~

~~{b}--the--detention--is--in--an--area--physically---and visually-separate-and-removed-from-those-of-adults;~~

~~{c}--it--appears--to-the-satisfaction-of-the-court-that public-safety-and-protection-reasonably--require--detention;~~

and

~~{d}--the-court-so-orders-~~

~~{3}--The-official-in-charge-of-a-jail-or-other-facility for-the-detention-of-adult-offenders-or-persons-charged-with crime--shall-inform-the-court-immediately-if-a-person-who-is or-appears-to-be-under-the-age-of-18-years--is--received--at the--facility--Such--official-shall-bring-the-person-before the-court--upon--request--or--deliver--him--to--a--detention facility-designated-by-the-court-~~

~~{4}{2}~~ A youth alleged to be in need of care shall be placed only in the facilities stated in subsection (1) of this section and shall not be detained placed in a jail or other facility intended or used for the detention of adults charged with criminal offenses.

~~{3}~~ After a probable cause hearing provided for in [section 1], a youth alleged to be a delinquent youth may be placed only in the facilities described in subsection (1) or in a detention facility."

Section 10. Section 41-5-502, MCA, is amended to read:

"41-5-502. Summons. (1) After a petition has been filed, summons shall be served directly to:

(a) the youth;

(b) his parent or parents having actual custody of the youth or his guardian or custodian, as the case may be; and

(c) such other persons as the court may direct.

(2) The summons shall:

1 (a) require the parties to whom directed to appear
2 personally before the court at the time fixed by the summons
3 to answer the allegations of the petition;

4 (b) advise the parties of their right to counsel under
5 the Montana Youth Court Act; and

6 (c) have attached to it a copy of the petition.

7 (3) The court may endorse upon the summons an order
8 directing the person or persons having the physical custody
9 or control of the youth to bring the youth to the hearing.

10 (4) If it appears from any sworn statement presented
11 to the court that the youth needs to be placed in detention
12 or shelter care, the judge may endorse on the summons an
13 order directing the officer serving the summons to at once
14 take the youth into custody and to take him to the place of
15 detention or shelter care designated by the court, subject
16 to the rights of the youth and parent or person having legal
17 custody of the youth as set forth in the provisions of the
18 Montana Youth Court Act relating to detention and shelter
19 care criteria and postdetention proceedings.

20 (5) If any youth is in shelter care or detained under
21 any provision of this chapter pending an adjudication, the
22 court, upon petition of the youth, his parents or guardian,
23 or his counsel, shall, as soon as practicable, conduct a
24 hearing in order to determine whether the circumstances of
25 the case require such detention or shelter care and the form

1 the detention or shelter care should take. All mentioned
2 parties shall be notified of such petition process at the
3 time of initial detention or shelter care."

4 Section 11. Section 41-5-802, MCA, is amended to read:

5 "41-5-802. Shelter care and detention facilities.

6 (1) (a) In all counties the county commissioners may
7 provide, by purchase, lease, or otherwise, a place to be
8 known as the youth detention facility, which shall not be
9 used for the confinement of adult persons charged with
10 criminal offenses, where delinquent youths and youths in
11 need of supervision may be detained until final disposition,
12 which place shall be maintained by the county as in other
13 like cases.

14 (b) The judge-having-jurisdiction county commissioners
15 may appoint such personnel as required, who shall have
16 charge of said facility and of the youths detained therein.

17 (c) The compensation of such personnel shall be fixed
18 by the court county commissioners, and such compensation and
19 the maintaining of such facility shall be paid out of the
20 county treasury which may be supplemented by state
21 appropriation and federal funds.

22 (d) The county commissioners shall provide for
23 inspection of any county detention facility every 3 months.
24 Inspection must include but is not limited to health, fire
25 safety, security, rehabilitation programs, recreation,

1 treatment of youths, and personnel training.

2 (e) The judge of the district youth court for the
3 county shall inspect any detention facility at least once a
4 year.

5 (2) (a) ~~Youth---courts---and~~ Counties, cities, or
6 nonprofit corporations may provide by purchase, lease, or
7 otherwise, a place to be known as a shelter care facility.

8 (b) Such facility shall be physically unrestricting
9 and may be used to provide shelter care for youth alleged or
10 adjudicated delinquent, in need of supervision, or in need
11 of care.

12 (c) Such facility shall be separate and apart from any
13 facility housing adults charged with criminal offenses.

14 (d) State appropriations and federal funds may be
15 received by the ~~youth--court~~ county, cities, or private
16 nonprofit corporations for establishment, maintenance, or
17 operation of such facility.

18 (e) Such facility shall be furnished in a comfortable
19 manner and be as nearly as possible like a family home.

20 (f) Such facility may be operated in conjunction with
21 a youth detention facility."

22 Section 12. Section 7-32-2221, MCA, is amended to
23 read:

24 "7-32-2221. Segregation of prisoners -- confinement of
25 juveniles. (1) Each county jail must contain a sufficient

1 number of rooms to allow the sheriff, jail administrator, or
2 private party jailer to separately confine classes of
3 prisoners as may be necessary to the security and safety of
4 those prisoners and the jail.

5 (2) Persons who are violent, disturbed, or inebriated
6 must not be kept or put into the same room with other
7 prisoners, nor shall male and female prisoners (except
8 husband and wife) be kept or put into the same room.

9 (3) Juveniles may be confined only under conditions
10 that comply with ~~41-5-306(2)~~ [sections 1 and 2]."

11 Section 13. Section 53-30-229, MCA, is amended to
12 read:

13 "53-30-229. Hearing on alleged violation of aftercare
14 agreement -- right to appeal outcome. (1) When it is alleged
15 by an aftercare counselor that a youth has violated the
16 terms of his aftercare agreement, the youth shall be granted
17 a hearing at the site of the alleged violation or in the
18 county where the youth is residing or is found within 10
19 days after notice has been served on the youth or the youth
20 is detained, whichever is earlier. The purpose of the
21 hearing is to determine whether the youth committed the
22 violation and, if so, whether the violation is of such a
23 nature that he should be returned to the juvenile facility
24 from which he was released or a different plan for treatment
25 should be pursued by the department of institutions.

1 (2) The youth, upon advice of an attorney, may waive
2 his right to a hearing.

3 (3) With regard to this hearing, the youth shall be
4 given:

5 (a) written notice of the alleged violation of his
6 aftercare agreement, including notice of the purpose of the
7 hearing;

8 (b) disclosure of the evidence against him and the
9 facts constituting the alleged violation;

10 (c) opportunity to be heard in person and to present
11 witnesses and documentary evidence to controvert the
12 evidence against him and to show that there are compelling
13 reasons which justify or mitigate the violation;

14 (d) opportunity to have the referee subpoena
15 witnesses;

16 (e) the right to confront and cross-examine adverse
17 witnesses;

18 (f) the right to be represented by an attorney;

19 (g) a record of the hearing; and

20 (h) notice that a written statement as to the evidence
21 relied upon in reaching the final decision and the reasons
22 for the final decision will be provided by the referee.

23 (4) The department shall appoint a referee, who shall
24 not be an employee of the department, to conduct the
25 hearing. In the conduct of the hearing, the department may

1 request the county attorney's assistance as necessary. The
2 department shall adopt rules necessary to effect a prompt
3 and full review.

4 (5) If the referee finds, by a preponderance of the
5 evidence, that the youth did in fact commit the violation,
6 he shall make a recommendation to the department for the
7 placement of the youth. In making this recommendation, the
8 referee may consider mitigating circumstances. Final
9 approval rests with the department and must be made within
10 10 days of the referee's recommendation.

11 (6) The youth may appeal from the decision at the
12 hearing to the district court of the county in which the
13 hearing was held by serving and filing a notice of appeal
14 with the court within 10 days of the department's decision.
15 The youth may obtain a written transcript of the hearing
16 from the department by giving written notice of appeal. The
17 district court, upon receipt of a notice of appeal, shall
18 order the department to promptly certify to the court a
19 record of all proceedings before the department and shall
20 proceed to a prompt hearing on the appeal based upon the
21 record on appeal. The decision of the department shall not
22 be altered except for abuse of discretion or manifest
23 injustice.

24 (7) Pending the hearing on a violation and pending the
25 department's decision, a youth may not be detained except

1 when his detention or care is required to protect the person
2 or property of the youth or of others or he may abscond or
3 be removed from the community. Procedures for taking into
4 custody and detention of a youth charged with violation of
5 his aftercare agreement shall be as provided in 41-3-1111,
6 [section 1], [section 2], and 41-5-306.

7 (8) If the decision is made to return the youth to the
8 institution from which he was released and the youth appeals
9 that decision, he shall await the outcome of the appeal at
10 such institution."

11 NEW SECTION. Section 14. Codification instructions.

12 (1) Sections 1 through 3 are intended to be codified as an
13 integral part of Title 41, chapter 5, part 3, and the
14 provisions of Title 41, chapter 5, part 3, apply to sections
15 1 through 3.

16 (2) Sections 4 and 5 are intended to be codified as an
17 integral part of Title 41, chapter 5, part 8, and the
18 provisions of Title 41, chapter 5, part 8, apply to sections
19 4 and 5.

20 NEW SECTION. Section 15. Coordination instruction. If

21 both this act and __ Bill No. __ [LC 38] are passed and
22 approved, then the rulemaking authority delegated to the
23 department of institutions in [section 5] is transferred to
24 the department of family services.

-End-

In compliance with a written request, there is hereby submitted a Fiscal Note for SB226, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising procedures for youth detention; requiring a probable cause hearing after a youth has been taken into custody; providing detention procedures for a youth before a probable cause hearing; allowing establishment of regional detention facilities; granting the Department of Institutions rulemaking authority; and amending sections 7-32-221, 41-5-303, 41-5-305, 41-5-306, 41-5-502, 41-5-802 and 53-30-229, MCA.

ASSUMPTIONS:

1. The Department of Institutions will require an additional .5 FTE to license juvenile detention facilities. It is likely that no more than four detention facilities will be developed within the biennium. It is possible that 1.0 FTE could manage a statewide inspection program, even if every county were to develop detention facilities.
2. The Department of Social and Rehabilitation Services will experience increased payments for shelter care at the current rate of \$24.62 per day; the Department does not pay for detention facilities.
3. During FY86, there were about 200 children held in detention for a maximum of 5 days each, totalling 800 days possible for shelter care as each youth would remain in detention 1 day for the probable cause hearing. It is assumed that the department would have to pay shelter care costs equal to 1/2 of the FY86 total or 400 days of shelter care.
4. A maximum of half of the children will be placed in shelter care instead of being released or going to other programs or facilities.
5. There will be no fiscal impact on the Judiciary.

FISCAL IMPACT:Expenditures:

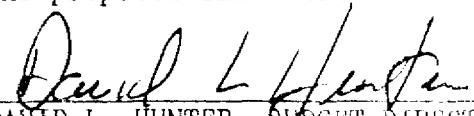
		<u>FY88/FY89</u>	
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Personal Services	\$ 0	\$ 13,773	\$ 13,773
Operating Expenses	0	3,115	3,115
Benefits	0	9,848	9,848
TOTAL	\$ 0	\$ 26,736	\$ 26,736

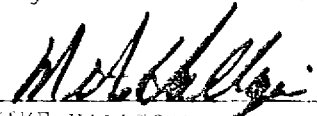
Funding:

General Fund	\$ 0	\$ 26,736	\$ 26,736
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EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

The proposed law could increase county expenditures for inspection of youth detention facilities.

 DATE 2/2/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

 DATE 2-2-87
MIKE HALLIGAN, PRIMARY SPONSOR

Fiscal Note for SB226, as introduced.

SB 226

have shown people who had poppy seeds on food have tested positive for heroin. He said the testing is not a sound system yet because of all the different types of chemical reactions people can have to different legal drugs, like hay fever medicine testing as marijuana, or just to food like the poppy seed bread. He supported the bill.

Bill Leaphart, representing himself, favored the bill because drug testing is done for safety purposes and the test should be done properly. He said the test should be fair, but should be done for the safety of others.

OPPONENTS: John Fitzpatrick, Pegasus Gold Corp., opposed the bill because the drug testing procedure should not have two specimen samples, but one, and that one would be used for the two tests. He explained how dangerous it is for his company to have a person on drugs working at the gold company. He explained how he just caught someone today smoking a marijuana joint on the job. He gave the committee amendments for SB 388, which he felt were appropriate. (Exhibit 7)

DISCUSSION ON SENATE BILL 338: Senator Pinsoneault asked why the testing person has to be so close to the person giving the specimen. Mr. Renz said it is amazing how people will tamper with a specimen while giving it. He gave an example of how people will put salt on their fingers and get it into the urine so it will destroy any chemicals in the sample. Mr. Fitzpatrick echoed the same reasoning for getting so close; it will be a cleaner test.

Senator Blaylock asked Mr. Fitzpatrick how many tested positive for "coke" at the Pegasus Corp. Mr. Fitzpatrick said two. Senator Mazurek asked if the two who tested positive petitioned against the test. Mr. Fitzpatrick said they did not.

Senator Boylan closed the hearing on Senate Bill 338.

CONSIDERATION OF SENATE BILL 226: Senator Halligan, Missoula, introduced the bill and said it was by the request of the Juvenile Justice Commission and amends the laws relating to the Youth Court.

Dorothy McCarter of the Attorney General's office explained the bill. Senator Halligan presented a statement of intent. (Exhibit 7A)

PROPOSERS: Dorothy McCarter gave details of every section amended. (Exhibit 8)

Steve Nelson, Board of Crime Control, said the bill will give a youth a "probable cause" hearing to see if they should leave him in jail or take him to a youth detention center. He said 18 out of 20 districts do these hearings at the present time. He said Curt Chisholm, Department of Institutions, supports the bill also, but he didn't agree with section 5 of the bill. He gave no comments on why he did not agree.

Ted Lechner, Thirteenth Judicial District, supported the bill because there is no definite law on the books in Montana for this situation. He said no one likes to be in charge of this kind of thing. He said the bill states who is to enforce the decision on a delinquent youth and the guidelines to follow with a youth.

Mike Schaffer, representing himself, felt youths should not be held in adult jails because of the youth's age and immaturity.

Jeff Langan, Montana Youth Justice Council, supported SB 226 because it brings to the attention of the public what a problem this really is.

OPPOSERS: There were none.

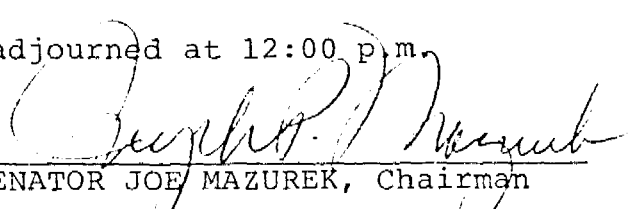
DISCUSSION ON SENATE BILL 226: Senator Pinsoneault asked about page 12, line 14 and how they intend to handle a youth who has committed a serious crime by putting him in a detention facility. Mr. Langan said there are different levels of detention and there are protection standards written for each facility.

Senator Mazurek asked if the bill doesn't pass, what happens with the federal agency that is involved. Mr. Langan said one of the main issues here is the state is complying to a federal program that is already set up.

Senator Beck said it will take rural areas a little more time than 24 hours to get a youth court judge there because of the distance and remoteness. Mr. Langan said there has not been a problem with that so far.

Senator Halligan closed the hearing on SB 226.

ADJOURNMENT. The meeting adjourned at 12:00 p.m.


SENATOR JOE MAZUREK, Chairman

(This sheet to be used by those testifying on a bill.)

NAME: JEFFREY M. LAMCAN DATE: 2/17/87

ADDRESS: 414 N. Broadway Missouri Mt. 59802

PHONE: ⁽⁴⁰⁶⁾ 721-3882

REPRESENTING WHOM? Montana Youth Justice Council

APPEARING ON WHICH PROPOSAL: SB 226

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

50th Legislature

STATEMENT OF INTENT

SB Bill No. 226

A statement of intent is required for this bill because section 5 allows the department of institutions to adopt rules for the licensing of detention facilities.

Currently, Montana statutes make no provision for the licensing of juvenile detention facilities. There are presently two counties in the process of establishing detention facilities who need assurance that their facilities will meet minimum established standards on program operations and environmental conditions.

It is anticipated that the rules developed under this act will establish minimum standards for juvenile detention facilities. These standards should govern such matters as the capacity of the facility, its location, design, construction, equipment and operation, fire and safety precautions, medical services, qualifications and number of personnel, and the quality of services provided to the juveniles.

The rules should contain a procedure for notifying the appropriate officials of compliance or deficiencies. If the facility is found deficient, a procedure for remedying those deficiencies should be included with specific time limitations.

It is anticipated the state will conduct annual inspections of each facility, and may require written reports containing such information as the agency may need to set and enforce its standards.

SUMMARY OF SB226 (HALLIGAN)
(Prepared by Senate Judiciary Committee staff)

SB226 is by request of the Juvenile Justice Commission and amends the laws relating to the Youth Court. This bill establishes a requirement that there be a "probable cause" hearing before a youth can be detained. The hearing must be held within 24 hours after a youth is taken into custody, excluding weekends and holidays. Under current law, there is no hearing requirement; a youth can be held in jail until a probation officer files a petition in court, which must be done within a certain amount of time.

The sections of the bill are summarized as follows:

- Section 1. NEW. Requires probable cause hearing. A parent, guardian, or legal custodian may be held in contempt of court for failing to be present at a probable cause hearing unless he cannot be located or is excused by the court. If probable cause exists to believe that a youth is delinquent or in need of supervision and meets other detention criteria (41-5-305), the court may order the youth to be placed in a shelter care facility or detention facility (see summary of section 9).

- Section 2. NEW. Allows detention of a youth in a jail or other adult facility after being taken into custody and before probable cause hearing, under certain conditions.

- Section 3. NEW. Allows a youth who is placed in a detention or shelter care facility to be released on bail.

- Section 4. NEW. Allows counties and cities to create regional detention facilities. County of youth's residence is responsible for costs of detention.

- Section 5. NEW. Authorizes Department of Institutions to make rules governing licensing procedures for regional and county detention facilities. (Note: requires Statement of Intent)

- Section 6. Amends 41-5-103. Defines "Detention facility" as "a physically restricting facility designed to prevent a youth from departing at will".

- Section 7. Amends 41-5-303. Clarifies language regarding detention. Requires immediate notification to parent, guardian, or legal custodian [or close relative or friend if others cannot be found].

- Section 8. Amends 41-5-305. Clarifies language relating to probable cause hearing and detention. Adds the following criteria to list of criteria that permit detention:

Page 10, line 6 -- the youth's detention is required to protect persons or property; and

Page 10, line 8 -- there is good reason to believe the youth will not appear for court proceeding as ordered.

- Section 9. Amends 41-5-306. Clarifies language relating to changes regarding probable cause hearing and detention. Deletes provisions relating to detention in a jail or other adult facility. Youth alleged to be in need of supervision can be placed in a foster home, child welfare agency facility, or

youth group home. Youth alleged to be delinquent can be placed in above facilities or in a detention facility.

- Section 10. Amends 41-5-502. Page 13, line 16, inserts the word "legal" before "custody".

- Section 11. Amends 41-5-802. Provides that county commissioners instead of youth court judge shall hire and fix salary of personnel to staff county youth detention facility and provides that county commissioners must arrange inspection every 3 months. Requires youth court judge to inspect county youth detention facility once a year.

- Section 12. Amends 7-32-2221. Changes language relating to county jails to conform to this act.

- Section 13. Amends 53-30-229. Changes statute relating to taking into custody and detention of youth alleged to have violated an aftercare agreement to conform to this act.

- Section 14. Codification instruction. To be codified in various parts of Youth Court Act.

- Section 15. Coordination instruction. If bill creating new Department of Family Services passes, rulemaking authority given to Dept. of Institutions by this bill is transferrred to new Department.

COMMENTS: As drafted, the bill would prohibit detention in a jail or other adult facility. The significance of this is that counties would be required to have access to juvenile detention facilities [either establish and maintain one or pay another county to keep youth in the other county's youth detention facility]. Section 41-5-802 authorizes counties to acquire and maintain youth detention facilities. The Board of Crime Control will propose an amendment that would make this prohibition not effective until July 1, 1989; that is, until that time, a youth can be placed in a jail or other adult facility, but after that time, counties will have to make other arrangements for detention of these youths. The fiscal note doesn't seem to take into account the acquisition or maintenance of such facilities or payments to other counties to keep youth in another county's facility.

C:\LANE\WP\SUMSB226.

reck on a snowmobile (January 19, 1984). Mr. Erickson was, because of the accident, completely brain dead. The case went to court with a jury and the liability was tried first and the damages were tried second. He explained that Mr. Erickson hit an obstacle on a snowmobile trail and there was no warning sign that this obstacle was there. Mr. Englund explained that is why Mr. Erickson was suing because there should have been a warning. Mr. Englund felt something should be done to section four of the bill because the assumption on the risk part, as it is written, will not help the snowmobile people at all.

DISCUSSION ON SB 139: Bob Lane, attorney for the Fish and Game Department, said the bill, in section 4, could be corrected by just revising the first sentence in the section on assumption of the risk. Senator Pinsoneault asked how a judge would say a person was assuming a risk by just driving a vehicle of some sorts. Karl Englund said if a person is participating in snowmobiling, then he has taken the risk of being hurt. The committee decided that Valencia would look at Karl Englund's proposals and problems with the bill dealing with assumption on the risk and willful and wanton misconduct.

Senator Smith closed on SB 139.

ACTION ON SB 252: Valencia and Karl Englund handed out amendments for the bill to the committee (see Exhibit 6 and 7). Mr. Englund explained a situation dealing with an injured person and subrogation process, which Valencia's amendments and his amendments would create. Senator Blaylock moved the amendments presented by Valencia. The motion CARRIED. Senator Halligan moved the bill DO PASS AS AMENDED. The motion CARRIED.

COMMITTEE BILL ON PRODUCTS LIABILITY (LC 1797): Senator Halligan presented the draft to the committee (see Exhibit 8). The committee wanted Valencia Lane to look over the first draft and report back to the committee.

ACTION ON SB 311: Senator Blaylock asked if one had an initiative that wiped out freedom of speech, would the local community have to wait have the election to get this silly initiative into the courtroom. Senator Crippen said that kind of thing would never get passed by a community, so why worry about taking action against an initiative that was killed at the ballot. Senator Beck felt there will not be that many initiatives that would cause that much problem. Senator Beck moved to TABLE the bill. The motion carried with Senator Halligan voting no.

ACTION ON SB 226: The SRS handed out an amendment for the bill (see Exhibit 9). Valencia explained this amendment will put back a definition that was taken out before. Senator Blaylock moved the amendment. The motion CARRIED. The Board of Crime Control presented amendments (see Exhibit 10). Valencia said the amendments will give the Board some time to react to the bill. Senator Halligan moved the amendments. The motion

CARRIED. Senator Halligan moved the bill DO PASS AS AMENDED. Senator Beck asked if the amended bill was suggesting a youth could not be held in the same building with adults. He explained in his small town the same building is used but there is a separate place for juveniles. The committee felt as long as the youth is not right in with the adults the bill will stand. The motion CARRIED. Senator Halligan moved the STATEMENT OF INTENT to DO PASS. The motion CARRIED.

ACTION ON SB 137: Senator Blaylock moved SB 137 be taken from the TABLE. The motion CARRIED with Senator Beck voting no. Senator Yellowtail presented amendments from Pat Driscoll, Attorney General's Office (see Exhibit 11). Pat Driscoll explained that HB 294 and HB 423 are waiting for the passage or end of this bill. Senator Galt asked if the amendments address the Magistrates accounting problems. Mr. Driscoll said no. Mr. Driscoll said the officers are desperate to have this bill. Senator Beck asked if the amendment will reduce the fiscal note. Mr. Driscoll said it would reduce it. Senator Yellowtail moved the amendment. The motion CARRIED with Senator Halligan voting no. Senator Yellowtail moved the bill DO PASS AS AMENDED. Senator Crippen felt the penalties were still way to high for simple traffic violations. Senator Galt said he would vote for the bill if the Magistrates's bill passed. Senator Yellowtail withdrew his motion to DO PASS AS AMENDED until the committee could find out more about the Magistrates's bill in the House.

ACTION ON SB 188: The committee did not hear this bill, but was asked to look at the bill. Kim Schultz of the State Auditor's Office, explained the State Auditor has to subpoena to get all kinds of records including electronic funds transaction. She said this bill will prevent the Auditor's Office from going to court to subpoena someone so the Auditor's Office can get electronic funds transactions. She gave amendments to the committee, which would allow the State Auditor this right and no one else (see Exhibit 12). Senator Mazurek wondered if the State Auditor had the right to do this with criminal records. Ms. Schultz said the Auditor's Office has the only criminal justice authority in the department. She said the information could only be given to another state auditor's office. Senator Crippen asked how the procedure works now. She said an affidavit is typed and given to the judge who then subpoenas the person's records. Senator Crippen asked if the Auditor has been turned down by the judge for a subpoena. Ms. Schultz said no. Senator Crippen asked if there has been any delay in seeing the judge. She replied there has been quite a few times. Senator Pinsoneault asked if the department couldn't just go to a justice of the peace and ask him to subpoena someone. She said the law says it must be a district court judge. Senator Mazurek asked if any other agency has this kind of problem. She felt there were no others who dealt with this kind of situation. Senator Mazurek didn't agree with the idea of not getting the person's consent before getting into his records. He said when the person was subpoenaed to give his records, he had notice of the process and this bill doesn't give him that notice. Ms. Schultz explained the biggest

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb 18

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		X
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blavlock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

AMENDMENT TO SB 226
(Introduced Bill)

PROPOSED BY THE DEPARTMENT OF SOCIAL &
REHABILITATION SERVICES

1. Page 7, Line 24

Following: "~~institutions.~~"

Insert: "Nothing in this definition is intended to include juvenile correctional facilities, evaluation facilities, mental health facilities and services, and aftercare programs operated by the department of institutions."

PROPOSED AMENDMENTS TO SB226
(Proposed by Board of Crime Control)

1. Title, line 11.

Following: "AUTHORITY;"

Strike: "AND"

2. Title, line 13.

Following: "MCA"

Insert: "; AND PROVIDING EFFECTIVE DATES"

3. Page 2, line 12.

Following: "41-5-306"

Strike: ", "

Insert: "["

4. Page 2, line 13.

Following: "adults"

Insert: "]"

5. Page 19, line 25.

Following: line 24

Insert: "NEW SECTION. Section 16. Effective dates. (1) Except as provided in subsection (2), sections 1 through 13 are effective October 1, 1987.

(2) The bracketed language in subsection (5) of section 1 is effective July 1, 1989."

C:\LANE\WP\AMDSB226.

STATEMENT OF INTENT

SB Bill No. 226

A statement of intent is required for this bill because section 5 allows the department of institutions to adopt rules for the licensing of detention facilities.

Currently, Montana statutes make no provision for the licensing of juvenile detention facilities. There are presently two counties in the process of establishing detention facilities who need assurance that their facilities will meet minimum established standards on program operations and environmental conditions.

It is anticipated that the rules developed under this act will establish minimum standards for juvenile detention facilities. These standards should govern such matters as the capacity of the facility, its location, design, construction, equipment and operation, fire and safety precautions, medical services, qualifications and number of personnel, and the quality of services provided to the juveniles.

The rules should contain a procedure for notifying the appropriate officials of compliance or deficiencies. If the facility is found deficient, a procedure for remedying those deficiencies should be included with specific time limitations.

It is anticipated the state will conduct annual inspections of each facility, and may require written reports containing such information as the agency may need to set and enforce its standards.

STANDING COMMITTEE REPORT

February 13 1967

MR. PRESIDENT

SENATE JUDICIARY

We, your committee on.....

having had under consideration..... SENATE BILL No. 226

first reading copy (white)
color

Revising procedures for youth detention.

Respectfully report as follows: That..... SENATE BILL No. 226

BE AMENDED AS FOLLOWS:

1. Title, line 11.
Following: "AUTHORITY;"
Strike: "AND"

2. Title, line 13.
Following: "MCA"
Insert: "; AND PROVIDING EFFECTIVE DATES"

3. Page 2, line 12.
Following: "41-5-365"
Strike: ", "
Insert: "{ "

4. Page 2, line 13.
Following: "adults"
Insert: "}"

5. Page 7, line 24.
Following: "institutions."
Insert: "Nothing in this definition is intended to include juvenile correctional facilities, evaluation facilities, mental health facilities and services, and aftercare programs operated by the department of institutions."

~~DO PASS~~

~~DO NOT PASS~~

CONTINUED

Senator Mazurek

Chairman.

6. Page 19, line 25.

Following: line 24

Insert: "NEW SECTION. Section 16. Effective dates. (1) Except as provided in subsection (2), sections 1 through 13 are effective October 1, 1987.

(2) The bracketed language in subsection (5) of section 1 is effective July 1, 1989."

7049h/L:JFA\WP:j3

AND AS AMENDED
DO PASS

Rep. Miles asked Mr. England what affect this will have on insurance rates. He stated that it will have 0 to less than 1%.

Senator Smith closed the hearing on SB 139 by stating that the committee has worked with Mr. England on the problems he was concerned about and he hoped the comments made by Mr. England will not cloud the issue. Senator Smith stated that the Senate Judiciary Committee did not have any objections to this bill. He further stated that John Wilson, Director of Tourism for the Department of Commerce came in and testified in favor of the bill when it came up in the Senate. He recommended a be concurred in vote for SB 139 because it is a necessary piece of legislation.

SENATE BILL NO. 226, Senator Halligan, District No. 29, presented a handout which covered the background/problem of this bill. (Exhibit A). He stated that this act revised procedures for youth detention, requiring a probable cause hearing after a youth has been taken into custody, providing detention procedures for youth before a probable cause hearing and allowing release of a youth on bail. The Federal Juvenile Justice and Delinquency Prevention Act of 1984 mandates removal of all juveniles from adult jails. He pointed out that section 5 gives rulemaking authority to the Department of Institutions governing the licensure of juvenile detention facilities. This authority would be transferred to the Department of Family Services if HB 325 is enacted.

PROPONENTS:

TED LECHNER, 13th Judicial District, Director of Services, Yellowstone County, stated that they are currently developing a juvenile detention facility within Yellowstone County and some of the problems addressed in SB 226 are exactly the stumbling blocks that we are running into in developing that facility. He supported this legislation.

DOROTHY MCCARTER, Attorney at the Attorney General's Office, stated that she helped to draft this bill for the Board of Crime Control and pointed out that this legislation is badly needed in Montana.

STEVE NELSON, Department of Crime Control, explained that this legislation will tie up loose ends, it gives counties the statutory tools it needs to address problems of juvenile programs and it is a message to counties and to the state of Montana that at some point in time we will no longer hold juveniles in adult jails but rather have separate facilities for them.

CURT CHISOLM, Deputy Director, Department of Institutions, stated that they support this bill and think it is a good idea. He stated a concern with regard to the licensing procedure going into effect on July 1, 1989. It also gives the Department only two years to license these facilities effective October 1, 1987, and they are not prepared to do this. He pointed out that the Department has not been in the licensing business before. Mr. Chisolm suggested that the facilities should meet the licensing criteria and perhaps this bill should be routed to the Appropriations Committee. He suggested that rather than have the Department as the lead agency perhaps the Board of Crime Control could be the licensing agency.

REP. STRIZICH went on record in support of this legislation.

There were no opponents to SB 226.

QUESTIONS (or Discussion) ON SENATE BILL NO. 226:

Rep. Addy asked Ms. McCarter about page 2, lines 3-6, with regard to compelling the attendance of parents or legal guardians at pain of punishment and he questioned why the state compel their attendance. She stated that they are minors and the legal custodians have to be there on behalf of the child to know what the child's constitutional rights are and what the possibilities of disposition are for the child. Rep. Addy asked Senator Halligan the same question. He stated that this is not done now in youth court proceedings.

Senator Halligan closed the hearing on SB 226 by stating the the Federal standards will be in effect in 1989 and we need to deal with the procedures now.

SENATE BILL NO. 258, Senator Brown, District No. 2, sponsor, stated that this bill revises the law relating to training of justices of the peace. The bill proposes to bring the law into conformity with practice.

PROPONENTS:

BERNARD F. MCCARTHY, Justice of the Peace for Lewis and Clark County and Chairman of the Legislative Committee for the Montana Magistrates Association, stated that SB 258 simply makes the reality of the present situation law. He is former trainer for the Montana Supreme Court. The office has the budget, the expertise and the resources to conduct the training. He submitted written testimony as (Exhibit A).

DAILY ROLL CALL
JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 20, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)		✓	✓
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)		✓	
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

A
3-20-87
SB#226

INTRODUCED BY HALLIGAN

Background/Problem

1. The Federal Juvenile Justice and Delinquency Prevention Act of 1984 mandates removal of all juveniles from adult jails.
2. An Oregon federal court case (D.B. vs. Tewksbury) condemned the practice of using adult jails for juveniles. The court found that the following conditions among others, are violation of basic rights: (A) failure to provide any form of work, exercise, education, or recreation; (B) failure to provide adequate staff supervision to protect children from harming themselves and/or other children; and (C) failure to train staff to be able to meet the special psychological needs of confined children.
3. Montana statutes currently do not provide a legal definition for secure detention or an agency charged with the responsibility for developing standards for licensure of detention facilities.
4. County jails are the only secure facilities available in Montana to detain youth awaiting court action (preadjudicatory detention). Most of these facilities do not meet nationally accepted standards for adults and are not prepared to meet the special needs of the young people. This places a significant liability on local governments who must provide detention services.

YOUTH JUSTICE COUNCIL - BOARD OF CRIME CONTROL
PROPOSED LEGISLATION:

During 1986, the Juvenile Detention Task Force of the Youth Justice Council met to determine solutions to the detention problem. The Task Force developed the statutory charges reflected in SB 226 to resolve those issues in the following manner.

RECOMMENDATION I: Provide for probable cause hearings for any youth held 24 hours. This ensures both judicial review of the case and determines a point at which a youth must be placed in a juvenile detention facility.

A survey conducted in 1986 indicated that 18 of 20 Judicial Districts currently conduct some form of judicial review for detention.

Section 1 requires a probable cause hearing within 24 hours for purposes of determining further detention. Section 1 also clarifies adult jails can not be used for detention subsequent to the hearing, (with an effective date of July 1, 1989).

RECOMMENDATION II: Define Detention Facilities and allow for regional detention governed by group of counties.

Section 4 Enables the establishment of regional detention facilities and fixes the responsibility for financial liability with the county receiving detention services.

RECOMMENDATION III: Determine the administrative and financial responsibility for the operation of a juvenile detention facility.

Section 11 places the administrative and financial responsibility for operation of a detention facility with the county commissioners. It also calls for inspection of detention facilities by the county commissioners every three months and by the Youth Court Judge once a year.

RECOMMENDATION IV: Establish the responsibility for licensing juvenile detention facilities.

Section 5 Gives rule making authority to the Department of Institutions governing the licensure of juvenile detention facilities. This authority would be transferred to the Dept. of Family Services if HB 325 is enacted.

RECOMMENDATION V: Establish a clear and consistent procedure by which a youth is put into detention.

This is accomplished by expanding the detention criteria in 41-5-305, clarifying the language used to differentiate between "taken into custody" and "placed in detention" the term "apprehend" has been removed from the statute to reduce confusion.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

SENATE

BILL NO.

336

DATE _____

March 20, 1987

SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FOR

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

ACTION ON SENATE BILL NO. 223:

Rep. Bulger moved that SB #223, Be Concurred In. Question was called and a voice vote was taken. The motion CARRIED unanimously. SB #223, BE CONCURRED IN.

ACTION ON SENATE BILL NO. 226:

Rep. Strizich moved that SB #226, Be Concurred In. Rep. Mercer moved an amendment on page 3, line 22, inserting the language "youth and the" following "ability of the". Question was called and a voice vote was taken. The motion CARRIED UNANIMOUSLY. (See Amendment Attached). Rep. Strizich moved that SB #226, Be Concurred In As Amended. Question was called and voice vote was taken. The motion CARRIED unanimously. SB #226, BE CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO. 241:

Rep. Bulger moved that SB #241, Be Concurred In. Rep. Bulger moved amendments. Discussion followed with Rep. Mercer supporting the amendments. Question was called and a voice vote was taken. The motion CARRIED 14-1 with Rep. Giacometto dissenting. (See Amendments Attached). Rep. Bulger moved that SB #241 Be Concurred In As Amended. Mr. MacMaster stated that there are some clean up amendments on page 6, line 24. Rep. Mercer moved to clean up amendments. The motion CARRIED unanimously. Question was called on the bill and a voice vote was taken. The motion CARRIED 14-1 with Rep. Brown dissenting. SB #241, BE CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO. 229:

Rep. Rapp-Svrcek moved that SB #229, Be Concurred In. Rep. Miles opposed the motion stating that she opposes because she is not sure what function the court will be able to serve. Rep. Rapp-Svrcek pointed out that the people who can afford an attorney to take the case into the court, the judge can then place them ahead of people on the waiting lists. He stated that it is an equitable situation and this bill would prevent that from happening. Rep. Bulger stated that the attorney from the Board of Visitors opposed this bill. Question was called and a voice vote was taken. The motion FAILED 6-7. Rep. Miles moved to table the bill. A voice vote was taken and the motion CARRIED 10-5. SB #229, TABLED.

ACTION ON SENATE BILL NO. 102:

Rep. Cobb moved that the Statement of Intent Be Concurred In. Question was called and a voice vote was taken. The motion CARRIED unanimously.

DAILY ROLL CALL

JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 23, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

MARCH 23, 19 37

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 226

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

Chairman

MARCH 3, 1937.
REPORT OF THE COMMITTEE ON JUDICIARY
OF THE SENATE OF THE STATE OF NEW YORK
ON
SENATE BILL NO. 226
AN ACT TO AMEND THE JUDICIAL ARTICLE OF THE CONSTITUTION OF THE STATE OF NEW YORK

Murphy